RECORD
AND
BRIEFS

No. 14-15

Supreme Court, U.S.
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In The

Supreme Court of the United States

RICHARD ARMSTRONG, *et al.*,
Petitioners,

v.

EXCEPTIONAL CHILD CENTER, INC., *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether Medicaid providers who face injury from state law that conflicts with 42 U.S.C. §1396a(a)(30)(A) may maintain a cause of action for injunctive relief under the Supremacy Clause to prohibit state officials from implementing the preempted state law.

CORPORATE DISCLOSURE STATEMENT

None of the Respondent corporations has a parent corporation, and no public corporation owns any stock in these corporations.

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INTRODUCTION

For two centuries, the federal courts have been open to injured individuals seeking equitable relief against state laws that conflict with federal law and thus are unconstitutional under the Supremacy Clause. These cases have not been limited to anticipatory assertions of defenses to state enforcement actions. Nor has the presence of a Supremacy Clause cause of action depended on the constitutional provision that granted Congress the authority to enact the preemptive federal law. This Court's Supremacy Clause cases are firmly rooted in the traditional equitable authority of the courts that provided the backdrop for the Constitutional Convention, and the availability of equitable relief against preempted state law is necessary to secure the constitutional balance between the federal and state governments.

Congress enacted and amended the Medicaid Act in the context of the availability of a Supremacy Clause cause of action. For roughly half a century, the federal courts have routinely adjudicated countless injunction actions challenging state laws as conflicting with federal statutes enacted under the Spending Clause that provided defunding remedies to federal agencies. Whether brought under 42 U.S.C. §1983 or the Supremacy Clause, these actions have not interfered with, but rather have aided, the federal administration of the Social Security Act programs, including Medicaid, and the language of the Medicaid Act does not demonstrate that Congress intended to foreclose Supremacy Clause actions. Petitioners' plea to eliminate a constitutional cause of action available in the federal courts since the inception of the Republic should be rejected.

STATEMENT OF THE CASE

Respondents Exceptional Child Center, Inc. *et al.* provide "Residential Habilitation," a service available to individuals with a functional mental age of eight years or less, or with severe maladaptive behaviors requiring "consistent, intense, frequent services" to avoid institutionalization. Idaho Admin. Code 16.03.10.584, 16.03.10.702. Idaho funds these services with federal financial support through its Medicaid program, pursuant to a waiver approved by the federal Centers for Medicare and Medicaid Services ("CMS"). 42 U.S.C. §1396n(c); 24 C.F.R. §430.25. The Medicaid Act mandates that Idaho must maintain such methods and procedures relating to payment for these and other medical services "as may be necessary ... to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers" to ensure adequate access to care. 42 U.S.C. §1396a(a)(30)(A) ("Section 30(A)").

In 2005, Idaho Code §56-118 was enacted, requiring Idaho's Department of Health and Welfare ("Department") to "implement a methodology for reviewing and determining reimbursement rates" based on federally required and state-specific factors. Cert. Reply App. 12. In 2009, the Department published rates that resulted from this new methodology and "sought CMS approval of an amendment to the ... Waiver to change the method of setting reimbursement rates." *Id.* at 7.[1] Despite CMS'

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[1] The United States as *amicus* claims that through the 2009 waiver amendment, Idaho sought only "eventually" to implement a change in rate-setting methodology. U.S. Br. 5 n.2. But both the language of the waiver amendment (Cert. Reply App. 16), and Idaho's stipulation of facts (*id.* at 7) demonstrate that Idaho sought

approval of that amendment, Idaho did not implement the rates established by the federally approved methodology, solely because the Legislature did not provide sufficient budget appropriations. *Id.* at 8.

No administrative process is available for Medicaid providers or beneficiaries to challenge a State's failure to comply with the provisions of its approved waiver or any other state violation of federal law in implementing a waiver.[2] Lacking an administrative remedy, Respondents filed suit against Petitioners Richard Armstrong *et al.* ("Idaho") alleging that Idaho's continued payment of old rates different from those produced by the federally approved rate-setting methodology conflicted with federal law and should be enjoined.

The District Court held that under Section 30(A), "a state agency must consider actual provider costs" in setting Medicaid reimbursement rates and "budgetary concerns cannot form the sole basis for reimbursement rates," Cert. App. 22, and enjoined the continued use of the then-current rates in place of the rates Idaho admitted were produced by the federally approved methodology.

The Ninth Circuit affirmed, holding that because Section 30(A) requires "that reimbursement rates bear a reasonable relationship to provider costs" and Idaho "concede[s] that the 2006 rates remained in place for

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and obtained approval to "change" or "implement[]" new rate-setting methodologies, not merely to modify them at some later date.

[2] An administrative hearing can be triggered only if CMS *disapproves* a state plan amendment (not a waiver application) or *disallows* particular state spending, and then only if *the State* institutes a challenge. 42 C.F.R. §430.60(a).

'purely budgetary reasons,'" the rates were not consistent with Section 30(A). Cert. App. 3-4. The Ninth Circuit held that Idaho waived any argument that its failure to raise reimbursement rates is not a "Thing" in state law that can be preempted by the Supremacy Clause. *Id.* at 4 n.2.

This Court granted certiorari solely on the question whether Respondents have a right of action under the Supremacy Clause. 135 S.Ct. 44 (Mem) (Oct. 2, 2014). The Court declined to review the second question presented, *viz.*, whether the courts below were correct that Section 30(A) preempts Idaho law. *Id.*; Cert. i. Thus, as the case comes to this Court, it must be assumed that Idaho law conflicts with, and therefore is preempted by, Section 30(A).

SUMMARY OF ARGUMENT

1. Respondents obtained a prospective injunction to enjoin implementation of state law that injured them on the ground that the law is invalid under the Supremacy Clause because it conflicts with 42 U.S.C. §1396a(a)(30)(A). Their suit is structurally indistinguishable from *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85 (1983), *Foster v. Love*, 522 U.S. 67 (1997), *Pharmaceutical Research & Manufacturers of America v. Walsh*, 538 U.S. 644 (2003) ("*PhRMA*"), and countless cases decided by the federal courts since the founding.

As *amicus* United States recognizes, the availability of federal court suits for injunctive relief against state law preempted by federal law is "well established" and "serves an important purpose in vindicating the supremacy of federal law." U.S. Br. 20 & n.8. This Court recognized the viability of such suits in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738

(1824), reaffirmed their viability in *Shaw*, 463 U.S. at 96 n.14, and has decided on the merits at least 57 such cases, including several in the past few Terms after this Court declined to adopt the position Idaho advances here in *Douglas v. Independent Living Center of Southern California, Inc.*, 132 S.Ct. 1204 (2012). *See* Appendix (listing cases). As Justice Kennedy explained in *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103 (1989), "plaintiffs may vindicate ... pre-emption claims by seeking declaratory and equitable relief in the federal district courts through their powers under federal jurisdictional statutes." *Id.* at 119 (Kennedy, J., dissenting).

These suits fall within a broader category of cases invoking the courts' traditional authority to grant equitable relief – as opposed to damages – to enforce the Constitution. The Supremacy Clause must be read in light of the founding-era understanding that courts with equity jurisdiction could provide individuals equitable relief for injuries caused by public officials acting in excess of their lawful authority.

2. Idaho ultimately concedes that courts may entertain Supremacy Clause preemption actions but proposes that the Court limit their availability to cases where the plaintiff asserts an "anticipatory defense" to a state regulatory action. Pet. Br. 40. But this case fits that model. Moreover, this proposed new limitation on the authority of the federal courts is not supported by precedent or history. *See, e.g., American Trucking Ass'ns, Inc. v. City of Los Angeles*, 133 S.Ct. 2096, 2103-04 (2013); *PhRMA*, 538 U.S. at 649-50; *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 366 (2000); *Foster*, 522 U.S. at 68-69. Indeed, the availability of private litigation to vindicate the su-

premacy of federal law is *more* important when no state enforcement action could be brought.

3. Idaho also proposes a new limitation on Supremacy Clause actions in the context of the Medicaid Act. But, while the Court has used a contract analogy as an interpretative aid in some Spending Clause cases, it has always recognized that statutes adopted under Congress' spending powers are "Laws of the United States" for purposes of the Supremacy Clause. U.S. Const., Art. VI, cl. 2. Consequently, the Court repeatedly has struck down state laws preempted by Spending Clause statutes. The Court long ago rejected arguments that the Supremacy Clause is inapplicable when state participation in a Spending Clause program is voluntary and that the presence of a withholding-of-funds remedy as part of Spending Clause programs demonstrates that Congress intended to strip the courts of their traditional jurisdiction to enjoin implementation of preempted state laws. *Rosado v. Wyman*, 397 U.S. 397, 420, 422 (1970). Congress has ratified that interpretation of the pertinent statutes. While Congress could take a variety of actions to limit or channel Supremacy Clause actions, it has not done so in the context of Section 30(A).

4. Precedents regarding whether statutes create individual "rights" enforceable under 42 U.S.C. §1983 are not relevant to suits for prospective injunctive relief under the Supremacy Clause. Those Section 1983 cases deal with an issue of statutory interpretation and a statute that provides for compensatory and punitive damages and permits challenges to state action that does not have the force of law. The Court's precedents make clear that the unavailability of a

claim under Section 1983 does not mean that the federal courts cannot grant injunctive relief to enforce the Constitution.

Likewise, jurisprudence regarding implied statutory rights of action does not govern this case. Those cases are about congressional intent to create a statutory cause of action, which generally would allow damages suits against private defendants for private actions. Such claims are entirely divorced from claims for equitable relief directly under the Supremacy Clause to prevent implementation by public officials of preempted state laws.

"Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." *Green v. Mansour*, 474 U.S. 64, 68 (1985). That interest is as present in Supremacy Clause injunction actions like this one as in the actions Idaho would allow.

ARGUMENT

I. AN INJURED PLAINTIFF MAY SEEK INJUNCTIVE RELIEF IN FEDERAL COURT AGAINST STATE LAW PREEMPTED UNDER THE SUPREMACY CLAUSE.

A. The federal courts have always been open to suits by private litigants seeking to enjoin the implementation of unconstitutional state laws, including laws preempted under the Supremacy Clause.

For over two centuries injured individuals have sought equitable relief against preempted state laws in the federal courts. And for roughly half a century the federal courts have routinely adjudicated such ac-

tions in the context of federal statutes enacted under the Spending Clause. This Court should reject Idaho's invitation to radically shrink the traditional equitable powers of the federal courts.

1. Despite its protests, Idaho ultimately concedes that federal courts do have the authority to issue equitable relief directly under the Supremacy Clause. Pet. Br. 40; *see also* U.S. Br. 18; NGA Br. 26; Tex. Br. 15. As the United States recognizes, the availability of suits for injunctive relief against state laws preempted by federal law is "well established," "serves an important purpose in vindicating the supremacy of federal law," and is rooted in the federal courts' traditional equitable powers to grant injunctive relief. U.S. Br. 20 & n.8.

Almost two hundred years ago, this Court held in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), that "[i]t was proper" for a federal court to issue an injunction prohibiting implementation of a state law (there a tax) that was "repugnant to a law of the United States, made in pursuance of the constitution" (there the statute creating the Bank of the United States), explaining that the case was properly "cognizable in a Court of equity." *Id.* at 839, 859, 865, 868.[3] This Court reaffirmed the federal courts'

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[3] Congress conferred general federal question jurisdiction on the federal courts in the Judiciary Act of 1875, ch. 137, §1, 18 Stat. 470. Earlier, jurisdiction was generally limited to cases in diversity. *See* Judiciary Act of 1789, ch. 20, §11, 1 Stat. 73. During that time, injunction actions to enforce the Supremacy Clause were available where the federal courts had jurisdiction over the case. *See, e.g.*, *Osborn*, 22 U.S at 817-18 (jurisdiction conferred by statute incorporating Bank of the United States); *Gilman v. Philadelphia*, 70 U.S. (3 Wall.) 713, 719, 724 (1865) (diversity).

authority to hear such cases in *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96 n.14 (1983), explaining that "[a] plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, ... presents a federal question which the federal courts have jurisdiction under 28 U.S.C. §1331 to resolve."

Thus, as Justice Kennedy explained in *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103 (1989), "plaintiffs may vindicate ... pre-emption claims by seeking declaratory and equitable relief in the federal district courts through their powers under federal jurisdictional statutes." *Id.* at 119 (Kennedy, J., dissenting). This Court also pointed out in *Lawrence County v. Lead-Deadwood School District No. 40-1*, 469 U.S. 256, 259 n.6 (1985), that a claim that a state law is preempted by a federal statute adopted under Congress' Spending authority states a federal claim under the same rationale applied in *Shaw*.

The cases listed in the accompanying Appendix reflect that over the past two centuries this Court has decided at least 57 cases brought in federal court directly under the Supremacy Clause for injunctive or declaratory relief against preempted state laws, including several decided in the past few Terms *after* the Court in *Douglas v. Independent Living Center of Southern California, Inc.*, 132 S.Ct. 1204 (2012), declined to adopt the position Idaho advances here. *See, e.g., Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S.Ct. 2247, 2251 (2013) (state law preempted

by National Voter Registration Act);[4] *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 133 S.Ct. 2096, 2103-05 (2013) (local agreements preempted by Federal Aviation Administration Authorization Act ("FAAAA")); *Arizona v. United States*, 132 S.Ct. 2492, 2510 (2012) (state law preempted by federal immigration law); *cf. Sprint Commc'ns, Inc. v. Jacobs*, 134 S.Ct. 584, 588-89 (2013) (unanimously holding *Younger* abstention did not preclude federal preemption action). Countless such cases have been heard by the lower federal courts, and this Court has also decided on the merits numerous Supremacy Clause injunction claims brought initially in the state courts. *See, e.g., Mid-Con Freight Sys., Inc. v. Michigan Pub. Serv. Comm'n*, 545 U.S. 440, 442, 445 (2005); *Coyle v. Smith*, 221 U.S. 559, 562-65 (1911); *Boyer v. Boyer*, 113 U.S. 689, 690-91 (1885).[5]

2. These actions fall within a broader category of cases granting equitable relief, which "'has long been recognized as the proper means for preventing entities from acting unconstitutionally.'" *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561

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[4] While the Court's approach to analyzing the *merits* of the preemption claim in *Inter Tribal Council* differed from traditional Supremacy Clause cases because the federal statute at issue was adopted under the Elections Clause, the Court did not suggest that the source of Congress' statutory power affected the existence of a cause of action. *See* 133 S.Ct. at 2250

[5] *Cf. Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 773-77 (2000) ("long tradition of *qui tam* actions," coupled with fact that Court had "routinely entertained" suits by assignees despite never expressly recognizing their standing, was "well nigh conclusive" as to justiciability of *qui tam* claims).

U.S. 477, 491 n.2 (2010) (quoting *Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001)). *See, e.g., Osborn*, 22 U.S. at 868, 870.

While this Court has been reluctant to recognize new causes of action to seek *damages* for constitutional violations, it has repeatedly reaffirmed the traditional availability of injunctive relief in suits to enforce the Constitution. *See, e.g., United States v. Stanley*, 483 U.S. 669, 683 (1987) (claims for injunctive relief, unlike damages claims, are "designed to halt or prevent the constitutional violation ... [, seek] traditional forms of relief, and '[do] not ask the Court to imply a new cause of action.'") (quoting *Chappell v. Wallace*, 462 U.S. 296, 305 n.2 (1983)); *Malesko*, 534 U.S. at 74; *cf. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 404 (1971) (Harlan, J., concurring) (recognizing "presumed availability of federal equitable relief against threatened invasions of constitutional interests"). The distinction between suits for damages and those seeking equitable relief reflects the historical grounding of the latter in the federal courts' traditional equitable powers. *See Pierce v. Society of Sisters*, 268 U.S. 510, 536 (1925) ("Prevention of impending injury by unlawful action is a well-recognized function of courts of equity.").

B. Injunction actions to enforce the Supremacy Clause are supported by the founding era understanding that courts with equitable jurisdiction would have authority to prevent injury caused by constitutional violations.

Injunctions to enforce the Supremacy Clause are

firmly grounded in the founding generation's understanding of equity jurisdiction. Idaho's ahistorical approach ignores the background against which the Supremacy Clause was adopted.[6]

While common law courts in the eighteenth century would hear cases only where the plaintiff's injuries conformed to a recognized form of action, F.W. Maitland, *Equity, Also the Forms of Action at Common Law: Two Courses of Lectures* 296-300 (1929 ed.), equity courts could hear cases and provide relief for injuries that did not conform to the set common law forms, John Mitford, *A Treatise on the Pleadings in Suits in the Court of Chancery by English Bill* 7-9 (2d ed. 1787) ("Mitford"). To be entitled to equitable relief, plaintiffs had to show "that the acts complained of are contrary to equity, and tend to the *injury* of the complainants, and that they have no remedy, or not a complete remedy, without the assistance of the court." *Id.* at 43 (emphasis added).

It would be contrary to the understanding at the founding to limit injunctive relief suits to enforce the Constitution to circumstances in which a statute provides the plaintiff a "right" as that term is used in the

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[6] *Amicus* National Governors Association offers an account of colonial-era petitions to the Board of Trade and appeals to the Privy Council in England, but says nothing about types of cases the founding generation would have understood to be cognizable in courts of equity. NGA Br. 4-15. The Association also concedes that colonists could file petitions with the Board of Trade challenging colonial laws as repugnant to English law, and that in drafting the Supremacy Clause, the framers intended that courts would "set aside" preempted state law in actions cognizable in equity. *Id.* at 9, 18-19.

context of modern 42 U.S.C. §1983 and implied-statutory-right-of-action jurisprudence. Indeed, in the founding era a plaintiff in equity did not have to show that a statute provided a "right" even as the term was understood then (*i.e.*, a legal interest recognized by the common law courts). Rather, equity courts had jurisdiction to exercise power in a variety of contexts, including "where the principles of law by which the ordinary courts are guided *give no right*, but upon the principles of universal justice the inference of the judicial power is necessary to prevent a wrong, and the positive law is silent." Mitford at 103-04 (emphasis added); *see* 1 Joseph Story, *Equity Jurisprudence* §§29, 49 (1836) ("Story"). The question was whether the defendant's unlawful acts unjustly "tend to the *injury* of the complainants." Mitford at 43 (emphasis added).

Thus, at the founding, suits in equity against public officials were available to prevent injury caused by actions taken in excess of officials' legally conferred authority. *See, e.g., Hughes v. Trustees of Morden College*, 1 Vesey 188 (Ch. 1748) (suit in English High Court of Chancery against turnpike commissioners); *Box v. Allen*, 1 Dickens 49 (Ch. 1727) (commissioners of sewers). Cases decided after the founding confirm the settled principle that "relief may be given in a court of equity ... to prevent an injurious act by a public officer, for which the law might give no adequate redress." *Carroll v. Safford*, 44 U.S. (3 How.) 441, 463 (1845).

Applying this principle, the founding generation understood that suits would be available in courts with equity jurisdiction to enjoin public officials from transgressing the Constitution's limits on their au-

thority. The Supremacy Clause is one such limit. The framers understood that the courts would have the power to "set aside" and "declare ... void" preempted state laws in order to ensure the supremacy of national law. 2 Max Farrand, *The Records of the Federal Convention of 1787*, at 27 (1911 ed.) (Madison); *id.* at 28 (Morris); *id.* at 391 (Wilson).

The Constitution authorized the creation of federal courts with all traditional equitable powers by declaring in Article III that the judicial power extends "to all cases, in Law and Equity." The first Congress then granted the federal courts diversity jurisdiction over suits "in equity" in the Judiciary Act of 1789, ch. 20, §11, 1 Stat. 73, 78, and in doing so intended the courts to apply the principles and provide the remedies available in the High Court of Chancery in England. *See Robinson v. Campbell*, 16 U.S. (3 Wheat) 212, 222-23 (1818); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. (13 How.) 518, 563 (1851).

Suits to enforce the Constitution through equitable relief proliferated after Congress granted general federal question jurisdiction to the federal courts in all cases "in equity" in the Judiciary Act of 1875, ch. 137, §1, 18 Stat. 470. *See, e.g., Greenwood v. Union Freight R. Co.*, 105 U.S. 13, 14, 16-17 (1881); *Poindexter v. Greenhow*, 114 U.S. 270, 274 (1885); *Allen v. Baltimore & O.R. Co.*, 114 U.S. 311, 313 (1885); *Pennoyer v. McConnaughy*, 140 U.S. 1, 8 (1891); *Ex parte Tyler*, 149 U.S. 164, 187-88 (1893); *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362, 393, 399 (1894); *Scott v. Donald*, 165 U.S. 107, 108-09, 111-12 (1897); *Smyth v. Ames*, 169 U.S. 466, 469-70, 476-77, 517, 522-23 (1898); *see also Philadelphia Co. v. Stimson*, 223 U.S. 605,

620 (1912) (citing numerous cases where "state officers seeking to enforce unconstitutional enactments" were subject to "injunction process" to prevent "injury threatened by [officers'] illegal action"). This Court reaffirmed the viability of such suits in *Ex parte Young*, 209 U.S. 123, 149, 167 (1908).

C. Injunction actions to enforce the Supremacy Clause have correctly been treated the same as suits seeking to enforce other constitutional provisions.

This Court has never distinguished the availability of suits seeking injunctive relief to enforce the Supremacy Clause from suits seeking such relief to enforce other constitutional provisions. Nor is there a reasoned basis for such a distinction.

The Supremacy Clause declares that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land." U.S. Const., Art. VI, cl. 2. There is no structural or textual reason to distinguish between the Constitution and laws of the United States for purposes of suits to enjoin implementation of invalid state laws. A state official violates the Constitution by implementing a state statute that conflicts with either source of supreme law.

Contrary to Idaho's contention (Pet. Br. 37-39), a suit to enforce the Supremacy Clause *is* a suit that arises directly under the Constitution. *See Douglas v. Seacoast Prods., Inc.*, 431 U.S. 265, 272 (1977) (preemption "claim is basically constitutional in nature, deriving its force from the operation of the Supremacy Clause"). A state law "cannot be constitutional" if "it

conflicts with a law of congress made in pursuance of the constitution, and which makes it the supreme law of the land." *Dobbins v. Commissioners of Erie County*, 41 U.S. (16 Pet.) 435, 450 (1842), *overruled on other grounds by Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 481-82, 486 (1939); *see McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819) ("unavoidable consequence of that supremacy which the constitution has declared" is that state laws preempted by "laws enacted by congress" are "unconstitutional and void"); *Osborn*, 22 U.S. at 868, 870 (state law "repugnant to a law of the United States" is "unconstitutional and void").[7]

Idaho suggests the courts' equity jurisdiction is limited to enforcing provisions of the Constitution that involve individual "rights," but this Court has decided on the merits many actions for prospective injunctive relief to enforce *structural* provisions of the Constitution. *See, e.g., Free Enterprise Fund*, 561 U.S. at

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[7] Idaho's reliance on *Swift & Co. v. Wickham*, 382 U.S. 111 (1965) (Pet. Br. 38-39), is misplaced. The Court there dealt with a pure issue of statutory interpretation, *viz.*, whether Congress meant the jurisdiction of three-judge district courts, which was limited to situations where a state statute was challenged "'upon the ground of the unconstitutionality of such statute,'" to cover suits to enjoin enforcement of state laws based on alleged conflict with a federal statute. *Id.* at 114 (quoting 28 U.S.C. §2281 (1958)). The Court recognized that such suits *do* seek relief on "constitutional grounds," because "any determination that a state statute is void for obstructing a federal statute does rest on the Supremacy Clause of the Federal Constitution." *Id.* at 125. Nonetheless, the Court narrowly construed the jurisdiction of three-judge courts because of the particular concerns of the legislators who enacted the jurisdictional statute and "important considerations of judicial administration." *Id.* at 126-29.

491 n.2 (rejecting argument that "Appointments Clause or separation-of-powers claim should be treated differently than every other constitutional claim"); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413, 420-25 (2003) (state law intruded on federal foreign affairs power); *Printz v. United States*, 521 U.S. 898, 905, 918-25 (1997) (federal statute violated no commandeering principle derived from history and "structure of the Constitution"); *South-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 86-87 (1984) (state requirement violated Dormant Commerce Clause); *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 458 (1978) (reaching merits of injunctive claim under Compact Clause); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 583, 589 (1952) (steel mill seizures exceeded President's constitutional powers); *Hill v. Wallace*, 259 U.S. 44, 67-68, 70 (1922) (federal statute unenforceable because exceeded Congress' enumerated powers); *cf. Dennis v. Higgins*, 498 U.S. 439, 458 (1991) (Kennedy, J., dissenting) (like Contracts Clause, even if Commerce Clause secures no "rights" in Section 1983 sense, "courts provide a person injured by taxation that exceeds the limits of the Commerce Clause the 'right to have a judicial determination, declaring the nullity of the attempt to' levy a discriminatory tax") (quoting *Carter v. Greenhow*, 114 U.S. 317, 322 (1885)).[8]

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[8] *Amici*'s reliance on dicta in *Thompson v. Thompson*, 484 U.S. 174, 182-83 (1988), about the Full Faith and Credit Clause is misplaced. Tex. Br. 18. The Full Faith and Credit Clause concerns the enforcement of state law through state court judgments in individual disputes. The sole case on which *Thompson* relied, *Minnesota v. Northern Securities Co.*, 194 U.S. 48, 72 (1904), involved a pure *state law* anti-trust action that did not

There is no reason to treat suits for injunctive relief under the Supremacy Clause any differently from these other "structural" cases. As this Court has explained, "[a]n individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury ...." *Bond v. United States*, 131 S.Ct. 2355, 2364 (2011).[9] Individual equitable suits to enforce the Supremacy Clause effectuate "[t]he Framers[']conclu[sion] that allocation of powers between the National Government and the States enhances freedom ... [b]y denying any one government complete jurisdiction over all the concerns of public life." *Id.*

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even involve a state court judgment, and the Court held this state law action was not, simply by virtue of the Full Faith and Credit Clause, within the federal question jurisdiction of the federal courts. To hold otherwise would open the federal courts to innumerable quintessentially state law actions. In contrast, Supremacy Clause claims are purely federal, ensure the primacy of federal law in our federal system, and are within the federal courts' jurisdiction. *See Shaw*, 463 U.S. at 96 n.14.

[9] Idaho erroneously relies on *Tennessee Electric Power Co. v. Tennessee Valley Authority*, 306 U.S. 118 (1939) (Pet. Br. 48), in which the Court rejected a challenge to the operation of the Tennessee Valley Authority ("TVA") in a suit by the TVA's competitors. As this Court explained in *Bond*, the plaintiffs in *Tennessee Electric* had no "*state-law* cause of action" and alleged no substantive violation of the Tenth Amendment. *Bond*, 131 S.Ct. at 2363 ("'The sale of government property in competition with others is not a violation of the Tenth Amendment.'") (quoting *Tennessee Elec.*, 306 U.S. at 144) (emphasis added).

II. SUPREMACY CLAUSE ACTIONS ARE NOT LIMITED TO CIRCUMSTANCES INVOLVING THE ASSERTION OF AN "ANTICIPATORY DEFENSE" TO A POTENTIAL STATE ENFORCEMENT ACTION.

Idaho and its *amici* argue that the federal courts' power to issue equitable relief directly under the Supremacy Clause is limited to circumstances when a plaintiff "asserts preemption as an anticipatory defense to state enforcement or regulation of the plaintiff's conduct." Pet. Br. 40; *see* U.S. Br. 18-21; NGA Br. 26-29; Tex. Br. 15. But Idaho's proposed limitation does not help it here, because this action fits within the "anticipatory defense" model. In any event, neither case law nor history supports this suggested limitation, which would undermine the purpose of the Supremacy Clause.

A. This case fits within Idaho's "anticipatory defense" model.

Contrary to Idaho's assumption, the providers' claim here – that Idaho's method for setting reimbursement rates is preempted by federal law – could be raised as a defense to a hypothetical state enforcement action. Under Idaho law, Medicaid providers may not collect more than the reimbursement rate set by the Department of Health and Welfare ("Department"). Idaho Admin. Code 16.03.09.210.04, 16.03.09.230.02.b, 16.03.10.036.02.b. Idaho operates a Medicaid fraud control unit that "collect[s] ... overpayments" above those rates. 42 U.S.C. §1396b(q)(5); *see* Idaho Admin. Code 16.03.09.231.02. To recover overpayments, Idaho may "take enforcement action," Idaho Admin. Code 16.03.10.008, including by recouping

overpayments from other amounts owed to the provider, and where "recoupment is impracticable, the Department may pursue any available legal remedies it may have," *id.* 16.05.07.205. The Department can suspend or terminate providers' participation in Medicaid and impose civil monetary penalties. *Id.* 16.05.07.220, 230, 235. The Department may pursue these remedies through administrative action against the provider, Idaho Code §56-209h(4)-(10), which is subject to judicial review and enforcement, *id.* §67-5270 *et seq.*

A provider's assertion that a determination of overpayment was contrary to federal law – for example, because the State's reimbursement rate was unlawful under the Medicaid Act – is a defense to such an enforcement action. *See, e.g., Kootenai Med. Ctr. v. Idaho Dep't of Health & Welfare*, 147 Idaho 872, 881 (2009) (rejecting on merits argument that state regulation was preempted by federal law in action initiated when State retroactively reviewed and denied Medicaid reimbursements based on that state regulation); Idaho Code §67-5279(2)(a) (permitting reversal of agency action "in violation of constitutional or statutory provisions").

Rather than risking an accusation of misconduct, or facing potential debarment from Medicaid participation, the providers here were entitled to institute this action asserting in equity that the state-imposed maximum payment levels are preempted by federal law, and that they are thus immune from efforts to recoup from them payments they may have received in excess of those levels.

B. This Court has repeatedly resolved preemption actions involving no "anticipatory defense" to state regulation.

1. In any event, contrary to Idaho's assertions (Pet. Br. 41-46), this Court has routinely entertained Supremacy Clause preemption actions when the plaintiffs faced no possible threat of enforcement or regulatory proceedings, including at least three such cases decided in the past two years post-*Douglas*. *See American Trucking Ass'ns*, 133 S.Ct. at 2103-05; *Inter Tribal Council*, 133 S.Ct. at 2251; *Arizona*, 132 S.Ct. at 2510.

Indeed, in *American Trucking Ass'ns*, the Court acknowledged that the criminal provisions that gave the preempted local agreements the force of law did *not* apply to the plaintiffs and relied on two other preemption cases in which the plaintiffs similarly were not the potential target of enforcement action. *See* 133 S.Ct. at 2103-05 (citing *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 371-72 (2008) (FAAAA preempted state requirement applicable to retailers in suit by motor carriers), and *Engine Mfrs. Ass'n v. South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 248-51 (2004) (Clean Air Act preempted requirements applicable to vehicle fleet operators in suit by engine manufacturers)).[10]

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[10] The defendant port in *American Trucking Ass'ns* could have suspended or revoked the plaintiff trucking companies' permission to operate at the port under a contract, but there is no indication doing so would have involved any state enforcement proceeding in which the plaintiffs could have raised preemption as a defense; the Court could not tell what the port's penalty "scheme entails." 133 S.Ct. at 2100, 2104-05.

There are many other examples of Supremacy Clause actions that do not involve anticipatory defenses to "state compulsion." U.S. Br. 20. As early as 1865, in *Gilman v. Philadelphia*, 70 U.S. (3 Wall.) 713, 724 (1865), the Court decided on the merits a suit to enjoin, as allegedly preempted by federal statute, a state law authorizing construction of a bridge. In *Foster v. Love*, 522 U.S. 67, 68-69, 74 (1997), this Court held a state open primary law that would have permitted election of congressional representatives in October preempted by the federal statute establishing a uniform date for federal elections. And in *Pharmaceutical Research & Manufacturers of America v. Walsh*, 538 U.S. 644 (2003) ("*PhRMA*"), seven Justices reached the merits in a Supremacy Clause injunction challenge to a state's Medicaid prescription drug "prior authorization" procedure. *Id.* at 662-68 (plurality); *id.* at 671 (Breyer, J., concurring); *id.* at 687 (O'Connor, J., dissenting).

In *New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519, 532 (1979), the Court observed that "the case before us today does not involve any attempt by the State to regulate or prohibit private conduct in the labor-management field. It involves a state program for the distribution of benefits to certain members of the public." Nonetheless, the Court entertained (and rejected on the merits) the employer's contention that the payment of benefits to striking employees was preempted by the National Labor Relations Act ("NLRA"). *Id.* at 525, 529, 544-46.

This Court also stated in *Lawrence County* that a preemption challenge to a state law governing local governments' distribution of federal funds was cognizable in federal court. 469 U.S. at 259 n.6; *see infra* at 30. Other cases that do not fit the "anticipa-

tory defense" pattern include *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 366 (2000) (state law restricting State purchases from companies doing business with Burma preempted because threatens to frustrate federal statutory objectives), *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 475-77 (1996) (state law prohibiting use of funds for abortions challenged as preempted by Medicaid Act as affected by Hyde Amendment), *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 649-50 (1995) (insurers challenged state law requiring hospitals to collect surcharges from patients as preempted by Employee Retirement Income Security Act ("ERISA")), *Wisconsin Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 283-84 & nn.1-2 (1986) (state statute prohibiting State purchases of products from repeat NLRA violators preempted), *Perez v. Campbell*, 402 U.S. 637, 641-43, 656 (1971) (Bankruptcy Act preempts state law automatically suspending driver's license for failure to satisfy judgment arising out of car accident that has been discharged in bankruptcy), and *Rosado v. Wyman*, 397 U.S. 397, 407, 415-16 (1970) (state law altering method for computing standard of need for welfare recipients inconsistent with Social Security Act).[11]

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[11] The United States asserts that in three cases cited above the plaintiffs "had asserted claims under Section 1983." U.S. Br. at 17 n.6. But the plaintiffs in those cases relied on Section 1983 to pursue claims for violations of *other* constitutional provisions, and the courts expressly or implicitly assumed that Section 1983 did *not* apply to the plaintiffs' preemption claims. *See Rosado v. Wyman*, 304 F. Supp. 1356, 1360-64 (E.D.N.Y. 1969) (concluding court should reach merits of preemption claim

The United States concedes that, at least in *PhRMA*, no state enforcement action was available, but asserts that there the plaintiffs were "in effect asserting an immunity" from what were "in essence regulatory requirements governing primary conduct." U.S. Br. 32 n.12. But this effort to explain away *PhRMA* does not explain many cases cited above, *see, e.g.*, *Gilman*, 70 U.S. (3 Wall.) at 724; *Foster*, 522 U.S. at 68-69, 74; *New York Tel. Co.*, 440 U.S. at 532; *Lawrence County*, 469 U.S. at 259 n.6, and, in any event, the United States offers no historical or legal justification for the distinc-

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because it had "pendent" jurisdiction over that claim, where Section 1983 provided jurisdiction over *separate* Equal Protection claim that had become moot, and expressly declining to decide whether Section 1983 applied to preemption claim), *rev'd*, 414 F.2d 170 (2d Cir. 1969), *rev'd*, 397 U.S. 397, 401 (1970) (concluding district court properly reached merits of preemption claim "[f]or essentially those reasons stated in the opinion of the District Court"); *Love v. Foster*, 90 F.3d 1026, 1032 n.8 (5th Cir. 1996) (expressly deciding preemption claim "under our federal question jurisdiction to resolve a claim under the Supremacy Clause," citing *Shaw*, and declining to decide if plaintiffs *separately* stated claim enforceable under Section 1983), *aff'd*, 522 U.S. 67 (1997); *National Foreign Trade Council v. Baker*, 26 F. Supp. 2d 287, 293 (D. Mass. 1998) (*rejecting* preemption claim and *then* permitting amendment of complaint to *add* Section 1983 claim, presumably to support plaintiff's claim that state law violated constitutional exclusive federal authority over foreign affairs), *aff'd*, 181 F.3d 38, 71-77 (concluding state law was preempted, without mentioning Section 1983), *aff'd sub nom. Crosby v. National Foreign Trade Council*, 530 U.S. 363, 366 (2000) (same). The United States does not contest that, in each of these cases, the federal statutes at issue would not have satisfied the current standards for the creation of federal statutory "rights" under *Gonzaga University v. Doe*, 536 U.S. 273 (2002). *See infra* at 47-53.

tion. No language in *PhRMA* or other relevant decisions explains that preemption injunction actions under the Supremacy Clause are available only where the state action at issue "in essence" regulates private conduct. Rather, the decisions focus on the injury to or interference with federal interests that results from operation of the preempted state law.

PhRMA and similar cases are not distinguishable from this case in any relevant respect. At bottom, these cases all involve Supremacy Clause claims to enjoin allegedly preempted state laws affecting access to government benefits, not claims of "immunity" from "state regulation of primary conduct." U.S. Br. 18.

2. Historical practice at the time the Supremacy Clause was adopted also lends no support to Idaho's proposed limitation on preemption actions. While traditional equity suits did include those to enjoin actions at law, they were not limited to such cases. As previously discussed, suits seeking injunctive relief were generally available to prevent unlawful injury where there was no adequate remedy at law, including to redress or prevent injury from statutory violations. *E.g.*, *Bosanquett v. Dashwood*, Forrester, 39-40 (Ch. 1734) (suit in equity for refund based on usury statute where no action at law was available; "tho' a court of equity will not differ from the courts of law in the exposition of statutes; yet does it often vary in the remedies given, and in the manner of applying them"); *see also* 1 John Fonblanque, *A Treatise of Equity*, ch. 1, §3, pp. 13-15 (1793) ("Every matter ... that happens inconsistent with the design of the legislator ... may find relief" in equity); 1 Story § 10 (same). Supremacy Clause ac-

tions do not involve the "creat[ion of] a remedy in violation of law, or even without the authority of law." *Douglas*, 132 S.Ct. at 1213 (Roberts, C.J., dissenting) (internal quotation marks omitted). Rather, these actions "follow[] the law" (*id.*), by ensuring the supremacy of federal law and preventing ongoing Constitutional violations.

Moreover, suits to enjoin injurious actions taken by public officials were traditionally available in equity where the plaintiff was not threatened with any enforcement action at law. *See, e.g.*, *Hughes v. Trustees of Morden College*, 1 Vesey 188 (Ch. 1748) (injunction to prevent turnpike commissioners from digging on land); *Gardner v. Trustees of Village of Newburgh*, 2 Johns. Ch. Rep. 162 (N.Y. Ch. 1816) (injunction against village trustees' diversion of stream); *Belknap v. Belknap*, 2 Johns. Ch. Rep. 463 (N.Y. Ch. 1817) (similar); *Bromley v. Smith*, 1 Simons 8 (Ch. 1826) (injunction suit to prevent local treasurers from misapplying funds in manner inconsistent with act of Parliament); *Rankin v. Huskisson*, 4 Simons 13 (Ch. 1830) (injunction prohibiting construction of buildings by Commissioners of Woods and Forests); *Cooper v. Alden*, Harrington's Ch. Rep., 72 (Mich. Ch. 1838) (similar).[12] There is no historical justification for Idaho's proposed limitation.

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[12] Some equity courts also conceived of actions seeking to ensure compliance with statutory requirements governing the use of public funds as in the nature of suits to enforce a trust, a core arena of equity jurisdiction where no legal "rights" were at issue. *See, e.g.*, *Attorney General v. Heelis*, 2 Simons & Stuart 67, 76-78 (Ch. 1824) (commissioners appointed under act of Parliament to provide local public services equivalent to trustees subject to injunction to administer funds as required by statute);

3. Finally, Idaho is also wrong that *Shaw* and other "anticipatory defense" cases involved individual "rights," as that term is used in this Court's Section 1983 and implied-statutory-cause-of-action cases. Pet. Br. 41-45. The statutes in those cases do not contain the "'rights-creating' language" that this Court has deemed "critical" to creation of such a right. *Gonzaga University v. Doe*, 536 U.S. 273, 283-84 & n.3, 287 (2002); *see, e.g.*, *Shaw*, 463 U.S. at 91, 100 (preemption by 29 U.S.C. §1144(a), which states that ERISA "shall supersede any and all State laws insofar as they ... relate to any employee benefit plan").

Other statutes held to preempt state regulation have *no* preemption language at all, much less rights-creating language. *See, e.g.*, *Gould*, 475 U.S. at 283-84, 287-89 (NLRA preempts state statute prohibiting State purchases of products from repeat NLRA violators because it imposes supplemental sanction on conduct regulated exclusively by federal government);[13] *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 633 (1973) (Federal Aviation Act as amended by

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see generally 1 Story §29 (equitable suits to enforce trusts involved no "rights" recognized by law). Federal grants to States under Spending Clause programs like Medicaid can be understood as similar to trusts, which traditionally could be enforced by beneficiaries in equity even though the trusts provided them no legally cognizable rights.

[13] The Court did hold in *Golden State*, 493 U.S. at 112-13, that a claim of NLRA preemption is cognizable under Section 1983, but *Golden State* was a pre-*Gonzaga* case and, in any event, *Golden State* involved a different species of NLRA preemption than *Gould*. In *Gould*, there was no arguable "right" to be immune from supplemental penalties for violating federal law.

Noise Control Act preempted city ordinance despite absence of express preemption provision); *Hines v. Davidowitz*, 312 U.S. 52, 72-74 (1941) (state law preempted by federal Alien Registration Act). The same is also true of preemption suits involving no federal statute at all. *See, e.g.*, *Garamendi*, 539 U.S. at 416 ("[V]alid executive agreements are fit to preempt state law, just as treaties are ....").[14] Idaho's own acceptance of "anticipatory defense" cases thus conflicts with its insistence that this Court's Section 1983 and implied-statutory-right-of-action jurisprudence precludes the Supremacy Clause action here. Pet. Br. 18-35; *see infra* at 47-56.

C. Recognition of Idaho's proposed new limitation on preemption actions would undermine the purposes of the Supremacy Clause.

The United States recognizes that preemption injunction actions "serve[] an important purpose in vindicating the supremacy of federal law." U.S. Br. 20 n.8. That purpose is implicated here, and would be ill-served by a rule that permitted States to defy federal law in ways that injure private persons while leaving those persons no legal recourse for asserting the supremacy of federal law.

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[14] *Amici*'s arguments notwithstanding (NGA Br. 32; Tex. Br. 12-13), preemption actions do not conflict with *Medellin v. Texas*, 552 U.S. 491 (2008). *Medellin* held that because certain treaties were not self-executing absent implementing federal legislation, a judgment of an international tribunal created by *those* treaties did not "constitute[] directly enforceable federal law that pre-empts state" law. 522 U.S. at 498, 506. State law cannot be enjoined in a Supremacy Clause action where there is no federal law preempting state law.

If anything, the availability of private litigation to vindicate the supremacy of federal law is *more* important when no enforcement action could be brought. That is because a plaintiff who can raise a preemption defense will at some point be able to assert the supremacy of federal law and have the preemption issue adjudicated. A plaintiff who will face no enforcement action, by contrast, will simply lose benefits, be forced to vote in an unlawful election, or otherwise be injured by implementation of a preempted (and therefore void) state law. Foreclosing Supremacy Clause actions where no state enforcement action is possible would allow States to flout federal law by drafting their laws to be effectively self-executing.

III. A CAUSE OF ACTION UNDER THE SUPREMACY CLAUSE IS AVAILABLE TO CHALLENGE STATE AND LOCAL LAWS PREEMPTED BY MEDICAID SECTION 30(A).

A. Supremacy Clause actions are available in cases involving laws enacted under the Spending Clause.

The United States is wrong to suggest that, even if the Supremacy Clause ordinarily supplies a cause of action to challenge preempted state laws, there is no such cause of action when the preemptive federal statute was enacted under the Spending Clause. U.S. Br. 21-23; Cal. Br. 5-8.

1. The text of the Constitution supports no such distinction. The Supremacy Clause applies to all "Laws of the United States," U.S. Const., Art. VI, cl. 2,

including those adopted pursuant to Congress' powers to tax and spend to further the "general Welfare." U.S. Const., Art. I, §8, cl. 1. Ongoing state defiance of any valid federal law undermines the supremacy of federal law. As the Court explained in *Green v. Mansour*, 474 U.S. 64, 68 (1985) – involving a Spending Clause statute – "the availability of prospective relief of the sort awarded in *Ex parte Young* gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law."

2. This Court's precedents do not support disfavored treatment of the Spending Clause. This Court recognized in *Lawrence County*, 469 U.S. at 259 n.6, that a claim that a state law is preempted by a federal Spending Clause statute states a federal claim under the same rationale applied in *Shaw*. There, a preemption action asserted that a state law regulating the distribution of funds that local governments receive from the federal government was preempted by the Payment in Lieu of Taxes Act, 31 U.S.C. §6901 *et seq.*, which granted localities the authority to make their own decisions about such funds. The Eighth Circuit held that the plaintiff did not "affirmatively assert[] a federal claim." *Lawrence County v. South Dakota*, 668 F.2d 27, 30, 32 (8th Cir. 1982). Relying on *Shaw*, this Court recognized that "[t]his ruling was erroneous." *Lawrence County*, 469 U.S. at 259 n.6. The Supremacy Clause claim here is indistinguishable from that in *Lawrence County*.

This Court has also decided on the merits numerous other Supremacy Clause preemption claims in-

volving Spending Clause statutes. *See, e.g., PhRMA*, 538 U.S. at 649-50 (Medicaid Act); *Dalton*, 516 U.S. at 475-78 (Medicaid Act as affected by Hyde Amendment); *Rosado*, 397 U.S. at 407, 420 (Social Security Act).

3. The United States argues that Spending Clause laws are contractual in nature and so the question whether Medicaid providers may enforce particular provisions should be analyzed based on a third-party-beneficiary analogy. U.S. Br. 22-23. But the United States acknowledges that "neither the federal statute itself nor the resulting arrangement with a fund recipient constitutes an ordinary contract." *Id.* 22. This Court has used the contract analogy only as an interpretive aid, while "be[ing] careful not to imply that all contract-law rules apply to Spending Clause legislation." *Barnes v. Gorman*, 536 U.S. 181, 186 (2002) (emphasis omitted); *see Bennett v. Kentucky Dep't of Educ.*, 470 U.S. 656, 669 (1985) ("[T]he program cannot be viewed in the same manner as a bilateral contract governing a discrete transaction.").[15]

Further, the analogy to contract law supports the availability of preemption claims based on Spending Clause enactments. Contracting parties operate against a backdrop of default legal rules that govern the interpretation of their agreement. *See, e.g.*, Restatement (Second) of Contracts § 5(2) & cmt. b (1981). Individu-

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[15] Even if the contract analogy were relevant, it would be meaningful only as to actions brought under the quasi-contractual statute itself, not preemption actions brought under the Supremacy Clause, which seek not to "enforce" the statute, but to prevent injury caused by operation of an unconstitutional state law.

als aggrieved by a preempted state law have long been able to seek injunctive relief in federal court, *supra* at 7-10, so a State that accepts and continues to accept funding under a federal statutory program also accepts that a cause of action under the Supremacy Clause will be available to enjoin state violations of the federal law. Such suits have been heard in Spending Clause cases for at least four decades, so the States have had ample notice. *Infra* at 33.[16]

B. The Supremacy Clause applies to the Medicaid Act and to Section 30(A).

1. Idaho argues that Medicaid Section 30(A) lacks preemptive force because it "simply conditions fund-

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[16] States must be deemed to have been aware of this history and the availability of Supremacy Clause actions when they accepted Medicaid funding. Thus, Idaho is wrong to suggest that affirming the availability of Supremacy Clause actions would conflict with *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981). Pet. Br. 31-34. In any event, States' lack of awareness of such actions would not render their agreement to comply with the Medicaid Act involuntary. So long as a participating state has "clear notice" of an obligation imposed by federal law, a prospective injunction to preclude implementation of state law that conflicts with the federal statute simply holds the state to the "deal" that it "voluntarily and knowingly" accepts. *Cf. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 534 (2007) ("Our determination that IDEA grants to parents independent, enforceable rights does not impose any substantive condition or obligation on States they would not otherwise be required by law to observe."); *Bell v. New Jersey*, 461 U.S. 773, 790 n.17 (1983) (Congress need not warn in advance of "remedies available against a noncomplying State"). While Idaho might prefer that enforcement be limited to the ineffectual threat of possible withholding of funds years later by an overburdened federal agency, it does not have a legitimate interest in implementing a preempted law.

ing on the performance of certain conditions" and "does not obligate the State to do *anything*." Pet. Br. 50, 52 (emphasis in original); *see also* Tex. Br. 20-26; Cal. Br. 6-7. To the extent Idaho means to argue that the voluntary nature of state participation in Medicaid affects the relevant analysis, it is mistaken.

This Court long ago rejected the argument that a State's freedom to refrain from Medicaid participation means that the courts cannot enjoin its officials from implementing a state law contrary to the Medicaid Act while the State *does* participate in that program. The Court recognized in *King v. Smith*, 392 U.S. 309 (1968), that "States are not required to participate in the [federal] program," but held that "[t]here is of course no question that the Federal Government ... may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions *is to that extent invalid*." *Id.* at 316, 333 & n.34 (invalidating state regulation inconsistent with Social Security Act) (emphasis added); *see infra* at 34-39. Thus, the United States acknowledges that the Medicaid Act "remains binding law with the full force and preemptive effect of federal legislation under the Supremacy Clause." U.S. Br. 22 n.9 (citing *Bennett v. Arkansas*, 485 U.S. 395, 397 (1988) (per curiam); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 417 (1973)). *See also* Cert. Reply. App. 2-3 (Idaho stipulation that, "[s]hould a state choose to participate in the Medicaid program, it must comply with the requirements of the Medicaid Act.").[17]

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[17] *Amici* suggest that giving States a choice between complying with Section 30(A) and losing federal funding runs afoul

Nor is the Medicaid Act unique in this respect. Congress has created similar voluntary programs under its Commerce Clause authority, where it offers the State the power to regulate industries consistent with federal law or to abandon the field. *See New York v. United States*, 505 U.S. 144, 167 (1992); *FERC v. Mississippi*, 456 U.S. 742, 764-66 (1982); *Hodel v. Virginia Surface Mining & Recl. Ass'n*, 452 U.S. 264, 288 (1981). This Court has explained that such Commerce Clause statutes are the same as Spending Clause statutes because "the residents of the State retain the ultimate decision as to whether or not the State will comply. If a State's citizens view federal policy as sufficiently contrary to local interests, they may elect to decline a federal grant." *New York*, 505 U.S. at 168.

These conditional federal laws are supreme over state law. *See Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 643-48 (2002) (addressing preemption claims under Telecommunications Act of 1996, which permits, but does not require, state public utility commissions to assume regulatory authority over interconnection agreements, 47 U.S.C.

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of *National Federation of Independent Businesses v. Sebelius*, 132 S.Ct. 2566 (2012) ("*NFIB*"). Tex. Br. 24 n.5. However, *NFIB* held the Medicaid expansion provision of the Affordable Care Act invalid because it conditioned existing Medicaid funding on States' creation of a major new program; the Court explicitly reaffirmed that Congress may impose new requirements as conditions of continued Medicaid funding so long as they do not dramatically deviate from existing law so as to constitute "a shift in kind, not merely degree." 132 S.Ct. at 2605-06. Section 30(A) is not even a new requirement.

§252(e)(5)). Yet if statutory provisions imposing requirements on "voluntary" programs lacked preemptive force, it would follow that these federal laws likewise were not supreme.

2. To the extent that Idaho and its *amici* argue that preemption by the Medicaid Act cannot give rise to a Supremacy Clause action because the substantive obligations are imposed as conditions of federal funding, or because the Act authorizes enforcement by a federal agency through subsequent withholding of Medicaid funds from noncompliant States, they are also mistaken. In *Rosado*, this Court held that the grant of authority to the federal agency to withhold funds did not obviate the duty of courts "to resolve disputes as to whether federal funds allocated to the States are being expended in consonance with the conditions that Congress has attached to their use." 397 U.S. at 422-23. Similarly, *King* concluded there was "no question" that state laws that are "inconsistent with ... federal terms and conditions" imposed upon funds disbursed to States are "invalid." 392 U.S. at 333 n.34.

Those rulings are in accord with many other decisions of this Court, which have held that the Supremacy Clause invalidates state laws that are inconsistent with funding conditions attached to Medicaid and other Social Security Act programs. *See Wos v. E.M.A. ex rel. Johnson*, 133 S.Ct. 1391, 1394-95, 1398, 1402 (2013) (state lien on tort settlements inconsistent with Medicaid Act and therefore invalid under Supremacy Clause); *Arkansas Dep't of Health & Human Servs. v.*

Ahlborn, 547 U.S. 268, 292 (2006) (same); *Blum v. Bacon*, 457 U.S. 132, 145-46 (1982) ("Because [state] rules conflict with a valid federal regulation [adopted under the Social Security Act], they are *invalid under the Supremacy Clause.*"); *Miller v. Youakim*, 440 U.S. 125, 132, 134, 146 (1979) (state law "is inconsistent with the Social Security Act and *therefore invalid under the Supremacy Clause*"); *Youakim v. Miller*, 425 U.S. 231, 233-37 (1976) (per curiam) (remanding for determination of "Supremacy Clause claim" alleging state regulation was inconsistent with Social Security Act); *Philbrook v. Glodgett*, 421 U.S. 707, 719 (1975) (affirming injunction against state welfare regulation that conflicted with Social Security Act); *Shea v. Vialpando*, 416 U.S. 251, 252-53, 258, 266 (1974) (same); *Carleson v. Remillard*, 406 U.S. 598, 601 (1972) ("If California's definition conflicts with the federal criterion [under the Social Security Act] then *it ... is invalid under the Supremacy Clause.*"); *Philpott*, 409 U.S. at 415-17 (state law preempted by Social Security Act "*by reason of the Supremacy Clause*"); *Townsend v. Swank*, 404 U.S. 282, 285 (1971) ("We hold that the Illinois statute and regulation conflict with [the Social Security Act] and *for that reason are invalid under the Supremacy Clause.*"); *id.* at 286 ("[A] state eligibility standard that excludes persons eligible for assistance ... under federal AFDC standards violates the Social Security Act and *is therefore invalid under the Supremacy Clause.*"); *California Dep't of Human Res. Dev. v. Java*, 402 U.S. 121, 125, 135 (1971) ("[E]nforcement of [the state statute] *must be enjoined* because it is inconsistent with ...

the Social Security Act.") (emphases added in all cases).[18]

Thus, this Court has squarely rejected any notion that by granting defunding authority to a federal agency to enforce statutory requirements imposed as conditions of federal funding, Congress demonstrates an intent to foreclose federal court injunctive actions. *Cf.* Pet. Br. 28-29; U.S. Br. 24-25; *see, e.g.*, *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 522-23 (1990); *Wright v. City of Roanoke Redevelopment & Hous. Auth.*, 479 U.S. 418, 428 (1987); *Cannon v. University of Chicago*, 441 U.S. 677, 704-06 (1979). If Idaho were correct in asserting that a funding withdrawal provision shows that Congress intends to preclude private actions of any kind, that rule would apply both to Supremacy Clause actions and to Section 1983 cases involving provisions of the Social Security Act, and all of those cases would be wrongly decided.[19] As this Court has explained, "[t]he fact that the Federal Gov-

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[18] *Amici* erroneously assert that "this Court has never rejected the argument that the Medicaid Act is incapable of 'preempting' state law," but has merely "*assumed* that the Medicaid Act may preempt state law" because the attorneys in those cases did not argue otherwise. Tex. Br. 25-26 (emphasis in original). This Court has repeatedly "considered and rejected the argument" that a requirement imposed as a condition of federal funding lacks preemptive force to invalidate contrary state laws. *Rosado*, 397 U.S. at 420.

[19] In light of the particular judicial history of the Social Security Act, even if the Court wished to give notice that it would henceforth view the existence of a withholding-of-funds remedy in *new* Spending Clause statutes as indicative of intent to withdraw the traditional authority of the federal courts to entertain Supremacy Clause injunction actions, it would betray

ernment can exercise oversight of a federal spending program and even withhold or withdraw funds ... does not demonstrate that Congress has 'displayed an intent not to provide the "more complete and more immediate relief" that would otherwise be available under *Ex Parte Young*.'" *Virginia Office for Prot. & Advocacy v. Stewart*, 131 S.Ct. 1632, 1639 n.3 (2011) ("*VOPA*") (quoting *Verizon*, 535 U.S. at 647 (quoting *Seminole Tribe v. Florida*, 517 U.S. 44, 75 (1996))).

Nor does it matter that the mandates in the Medicaid Act are phrased as requirements for the contents of a state plan that States must submit to a federal agency that has authority to withhold funding. *See infra* at 43; Pet. Br. 51-52; Tex. Br. 20-22. This Court has repeatedly held that similarly structured federal laws establishing requirements for state plans invalidate contrary state laws. *See, e.g.*, *Blum*, 457 U.S. at 139-40 & n.8 (preemption by federal regulation requiring state Emergency Assistance plans to specify reasonable eligibility rules that do not result in inequitable treatment); *Shea*, 416 U.S. at 253, 260, 266 (preemption by federal statute requiring state welfare plans to "take into consideration" work expenses in setting standard of need); *Townsend*, 404 U.S. at 285, 287 (preemption by federal statute requiring state plans to provide for aid to eligible depend-

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Congress' reliance on prior Court decisions to apply such a rule to existing programs. *Cf. Cannon*, 441 U.S. at 717-18 (Rehnquist, J., concurring) (explaining that while Congress was now on notice that Court would be reluctant in future to imply statutory causes of action, Court would not apply that rule retroactively because "[w]e do not write on an entirely clean slate," and Congress had relied on prior interpretations of law).

ent children and defining "eligible child"); *Rosado*, 397 U.S. at 401, 406 n.8, 420 (preemption by federal statute requiring state plans to adjust determination of need and maximum benefits based on changes in living costs);[20] *cf. Java*, 402 U.S. at 125, 135 (preemption by federal statute conditioning payments to States on federal agency certification that state law provides methods of administration "reasonably calculated to insure full payment of unemployment compensation when due").

The highway funding language discussed in *South Dakota v. Dole*, 483 U.S. 203 (1987), does not aid Idaho's position. Pet. Br. 51; Tex. Br. 21 & n.3. The Medicaid Act is written differently from the highway funding statute, which does not mandate that a State accepting highway funds maintain a 21-year-old drinking age. Rather, it directs the federal government to withhold ten percent of specified funds from States that have lower drinking ages. 23 U.S.C. §158(a)(1)(A). The Medicaid Act, by contrast, *requires* participating States to have methods and procedures to ensure that rates provide for efficiency, economy, quality, and access to care; Congress authorized funding withdrawal as a means to enforce this mandate, but expressly chose to impose a mandate rather than to employ the drinking-age model. 42 U.S.C. §§1396a(a)(30)(A), 1396c; *see infra* at 45-46.

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[20] The then-applicable federal law authorized the relevant federal agency to suspend federal funding for noncompliant plans for the violations at issue in these cases. *See* 42 U.S.C. §604(a)(2) (1964 through 1982).

Idaho argues that preemption actions interfere with agency administration of the Medicaid Act (Pet. Br. 29-31; Cal. Br. 10-11), but preemption actions are subject to standard rules of agency deference. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984); *Managed Pharmacy Care v. Sebelius*, 716 F.3d 1235, 1240 (9th Cir. 2013). The courts can issue injunctive relief to prevent injury caused by state laws in conflict with the Medicaid Act. Where CMS speaks to the issue, however, the courts must defer.[21]

Preemption actions are also necessary in light of CMS' limited resources, which leave only hundreds of federal employees responsible for overseeing 56 different Medicaid programs' compliance with federal law in spending hundreds of billions of dollars in federal funds (and for monitoring provider fraud). *See* 2011 WL 3706105, Brief of Former HHS Officials as *Amici Curiae*, *Douglas v. Independent Living Ctr.*, Case Nos. 09-958, 09-1158, 10-283 (filed Aug. 5, 2011), at *19-22. Without such actions, preempted state law may cause low income Medicaid beneficiaries severe irreparable harm during the extensive time required to complete the administrative proceedings that precede the federal agency's imposition of a penalty. *See id.* at *24-25 & n.11. Moreover, imposition of a defunding penalty would harm the very low income beneficiaries that the Medicaid Act seeks to protect by reducing the funds available to States to reimburse providers for Medicaid services. As such, CMS

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[21] In this case in particular there is no risk of conflicting judicial and agency decisions, because CMS has already approved the rate-setting method that Idaho has failed to implement.

is understandably reluctant, if not completely unwilling, to impose such a penalty. *See id.* at *23-24.

As set forth above, injunction actions involving Spending Clause statutes administered by the Department of Health and Human Services ("HHS") have been the norm for over forty years. And as the former HHS Secretaries' brief sets forth, these actions have *not* caused problems for the federal agency; rather, the experience has been quite the opposite. *See id.* at *28-34.

3. Idaho's argument that Section 30(A) itself uses broad language, and requires consideration of multiple factors (Pet. Br. 30-31, 34-35; U.S. Br. 23), may be relevant to the merits analysis – that is, whether Section 30(A) in fact preempts Idaho's rate-setting method – but not to whether the Supremacy Clause supplies a cause of action. Because this Court denied certiorari on the question whether Respondents had demonstrated a violation of Section 30(A), 135 S.Ct. 44 (Mem) (Oct. 2, 2014), this Court must assume that the lower courts were correct that Idaho law directly conflicts with, and thus is preempted by, the Medicaid Act, and the only question is whether the Supremacy Clause supplies a cause of action to enjoin that preempted state law. *Cf. VOPA*, 131 S.Ct. at 1643 (Kennedy, J., concurring) ("In the posture of the case as it comes before the Court, it must be assumed that VOPA has a federal right to the records it seeks, and so the extension of [*Ex parte*] *Young* would vindicate the Supremacy Clause.").

C. It would violate, not effectuate, Congressional intent to preclude Supremacy Clause actions when Section 30(A) preempts contrary state law.

1. Congress has shown no intent to foreclose Supremacy Clause actions challenging state law as preempted by Section 30(A).

The United States contends that the legislative history shows that allowing a Supremacy Clause cause of action to enjoin state laws preempted by Section 30(A) would violate Congressional intent. U.S. Br. 29-30. But Congress has amended the Medicaid Act repeatedly in the decades since *Rosado*, 397 U.S. 397, held that federal courts have authority to issue injunctive relief against state laws preempted by the Social Security Act's state plan requirements, without changing the statutory structure to make the administrative remedy exclusive or otherwise to indicate its intent to foreclose the role of the courts. *Cf. Herman & MacLean v. Huddleston*, 459 U.S. 375, 384-86 (1983) (in light of "well-established judicial interpretation" permitting suits under §10(b) of Securities Exchange Act of 1934 "regardless of the availability of express remedies," Congress' decision when amending the securities laws in 1975 "to leave Section 10(b) intact suggests that Congress ratified the cumulative nature of the Section 10(b) action"). Nor has Congress amended the Act or taken any other steps to indicate its intent to preclude the longstanding practice of federal courts entertaining Supremacy Clause preemption actions.

Given Congress' acceptance of Supremacy Clause actions involving Spending Clause statutes over the last

forty-plus years, recognizing the longstanding availability of such actions would not "substantively change the federal rule established by Congress in the Medicaid Act." *Douglas*, 132 S.Ct. at 1212-13 (Roberts, C.J., dissenting). To the contrary, *foreclosing* the traditional authority of the federal courts, which was part of the background against which Congress legislated, would effectuate a substantive change in federal law.

The United States argues that the legislative history of the 1994 "*Suter* fix" amendment shows Congressional intent to foreclose Supremacy Clause actions when the preemptive federal statute is part of the Medicaid Act. U.S. Br. 29-30. The "*Suter* fix" provided that a Medicaid Act provision should not be "deemed unenforceable" on the ground that it requires a state plan or specifies the contents of a state plan, 42 U.S.C. §§1320a-2, 1320a-10, reflecting Congress' express intent to reject Idaho's argument that the Medicaid Act has no preemptive force. *See supra* at 32-33. The *Suter*-related legislative history the United States cites as evidence that Congress intended no preemption actions under the Supremacy Clause simply establishes that Congress intended that the rules about private enforcement that were in place in 1994 would remain undisturbed except for the rule foreclosing enforcement of a provision requiring plans or plan contents. As we have demonstrated, those 1994 rules include those regarding the availability of Supremacy Clause preemption actions. *See supra* at 7-10, 21-27, 29-41. The legislative history does not reveal any intent to foreclose such Supremacy Clause actions.

As further evidence of Congressional intent, the United States points to the repeal of the Boren Amend-

ment in 1997. U.S. Br. 30-31 n.11; Cal. Br. 11-13. But at the time that the Boren Amendment repeal was under consideration, Section 30(A) was already the subject of judicial enforcement by providers. *See Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491, 1495-96 (9th Cir. 1997); *Visiting Nurse Ass'n of N. Shore, Inc. v. Bullen*, 93 F.3d 997, 998, 1000 (1st Cir. 1996); *Methodist Hosps., Inc. v. Sullivan*, 91 F.3d 1026, 1027, 1028-29 (7th Cir. 1996); *Arkansas Med. Soc'y Inc. v. Reynolds*, 6 F.3d 519, 521-22 (8th Cir. 1993). In light of this case law, the National Governors Association urged Congress to repeal not only the Boren Amendment but also "Boren-like language" in other provisions of the Medicaid Act "that had exposed states to lawsuits driving up rates for services," and specifically cited Section 30(A) as among those provisions (and cited the then-recent Section 30(A) decision in *Orthopaedic Hospital*). *Governors' Perspective on Medicaid:* Hearing Before the S. Comm. on Finance, 105th Cong. 44 (1997). Despite this request, Congress repealed only the Boren Amendment, and not Section 30(A). Nor did Congress adopt any language at that time setting forth an intent that actions against state laws preempted by Section 30(A) be precluded. Given this history, it would ignore rather than further Congressional intent to upend the long line of precedent entertaining Supremacy Clause actions in the context of the Medicaid Act.[22]

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[22] Moreover, whatever the legislative history may say about *provider* suits, the United States points to no evidence of Congressional intent to preclude injunction suits by Medicaid *beneficiaries*. *See, e.g., Pennsylvania Pharm. Ass'n v. Houstoun*, 283 F.3d 531, 538, 541-42, 543-44 (3d Cir. 2002) (en banc) (Alito, J.) (concluding that Section 30(A) is written to benefit Medicaid recipients, not providers).

2. Although Congress has not limited Supremacy Clause actions in the context of Section 30(A), there are ways it could constitutionally do so.

Idaho and its *amici* are wrong to insist that recognizing the long-standing existence of preemption injunction actions would require courts to ignore Congressional intent and entertain private suits in the context of every federal statute, "regardless of what Congress has said." Pet. Br. 13, 23; Tex. Br. 13; NGA Br. 31. While Congress did not limit traditional equitable actions in the context of Section 30(A), *supra* at 31, 34-39, 42-44, there are ways it could do so.

Congress can expressly limit the jurisdiction of the federal courts, so long as an adequate remedy remains. *E.g.*, 29 U.S.C. §101 (limiting jurisdiction to issue injunctions involving labor disputes). Relatedly, it can create alternative "remedial scheme[s]" that, if adequate, foreclose the availability of traditional preemption actions. *Seminole Tribe*, 517 U.S. at 74. But as the United States has previously acknowledged, it is not arguing that Congress in Section 30(A) "'displayed an intent not to provide the "more complete and more immediate relief" that would otherwise be available under *Ex parte Young*.'" 2011 WL 2132705, Brief of U.S. as *Amicus Curiae*, *Douglas v. Independent Living Ctr.*, Case Nos. 09-958, 09-1158, 10-283 (filed May 26, 2011), at *32 n.12 (quoting *Verizon*, 535 U.S. at 647 (quoting *Seminole Tribe*, 517 U.S. at 75)). Providers have no alternative avenue to protect themselves from injury from state law that conflicts with the Medicaid Act.

Congress can also direct the federal courts to apply the doctrine of "primary jurisdiction" and "'refer' a question" to the appropriate federal agency for resolution prior to final judicial adjudication. *PhRMA*, 538 U.S. at 673-74 (Breyer, J., concurring) (noting court can issue injunction pending agency review); *see United States v. Western Pac. R. Co.*, 352 U.S. 59, 63-64 (1956) ("'Primary jurisdiction' ... applies where a claim is *originally cognizable in the courts*" but adjudication requires "resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body.") (emphasis added).[23]

Similarly, Congress can draft federal statutes such that they do not preempt state law at all (*e.g.*, 23 U.S.C. §158(a) (withholding percentage of highway funds to States with lawful drinking age under 21); *see supra* at 39), or such that they preempt state law only after a federal agency takes official action.

Congress also could draft federal law to require a federal agency to enter contracts with States and provide that such contracts would be enforceable only through traditional contract remedies. *Cf.*, *Miree v. DeKalb County, Ga.*, 433 U.S. 25, 27, 28 (1977) (concluding state law applied to third-party-beneficiary

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[23] Contrary to *amici*'s argument (Tex. Br. 27-30), primary jurisdiction doctrine does not support reversal here. *See Rosado*, 397 U.S. at 406-07 (holding that primary jurisdiction doctrine does not apply to Social Security Act case where, as here, plaintiff could not initiate administrative process, but noting that federal court should where possible seek views of federal agency). Moreover, Idaho did not raise this argument, here or below.

claim alleging breach of contract between county and federal agency entered pursuant to federal statute). But this Court long ago held that Medicaid is not drafted in a way that forecloses non-contractual remedies. *Supra* at 31-41.

Supremacy Clause actions do not flout Congressional intent; they reinforce it, by ensuring the supremacy of federal law where Congress has not affirmatively limited or redirected this long-standing traditional form of relief.

IV. THE COURT'S JURISPRUDENCE REGARDING 42 U.S.C. §1983 CLAIMS AND STATUTORY RIGHTS OF ACTION DOES NOT APPLY TO INJUNCTIONS SOUGHT DIRECTLY UNDER THE CONSTITUTION.

Notwithstanding Idaho's exhortations (Pet. Br. 19-33), this Court's jurisprudence regarding whether statutes create individual "rights" enforceable under Section 1983 or an implied statutory cause of action is simply not relevant to suits for prospective injunctive relief directly under the Supremacy Clause.

A. Section 1983 claims and preemption injunction actions to enforce the Supremacy Clause are substantively, historically, and practically distinct.

Compared with traditional Supremacy Clause equitable actions, Section 1983 reaches more conduct and provides broader remedies, and when first adopted it greatly expanded the federal courts' jurisdiction. This Court's recognition of limits on that statutory expansion in *Gonzaga* and its progeny, based on the particular statutory text and purpose of Section 1983, does

not affect the pre-existing authority of the federal courts to hear claims for injunctive relief directly under the Supremacy Clause.

This Court has consistently recognized that the unavailability of a claim under Section 1983 does not exclude traditional injunctive relief to enforce the Constitution. *Compare Carter v. Greenhow*, 114 U.S. 317, 322-323 (1885) (holding that Contracts Clause did not "secure" rights enforceable through what is now Section 1983, but noting that Congress "has legislated in aid of the rights secured by that clause of the constitution ... by conferring jurisdiction upon the [lower federal] courts ... of all cases arising under the constitution and laws of the United States"), *with White v. Greenhow*, 114 U.S. 307, 308 (1885) (permitting suit to enforce Contracts Clause to proceed under federal jurisdiction statute); *see also Holt v. Indiana Mfg. Co.*, 176 U.S. 68, 72 (1900) (suit could not be brought under what is now Section 1983, but "[i]f state legislation impairs the obligations of a contract ... remedies are found in [what is now 28 U.S.C. §1331], giving to the circuit courts jurisdiction of all cases arising under the Constitution and laws of the United States").

That is equally true of suits to enforce the Constitution's Supremacy Clause. *See Golden State*, 493 U.S. at 119 (Kennedy, J., dissenting) (even where Section 1983 damages claims are unavailable, plaintiffs "may vindicate ... pre-emption claims by seeking declaratory and equitable relief in the federal district courts through their powers under federal jurisdictional statutes").

1. Section 1983 provides a cause of action to challenge state violations of federal rights that could not

be challenged in a traditional suit to enforce the Supremacy Clause.

The Supremacy Clause provides that federal law is supreme over "any Thing in the Constitution or Laws of any State." U.S. Const., Art. VI, cl. 2. It thus preempts – *i.e.*, nullifies or voids – state and local laws and regulations that conflict with or frustrate the objectives of federal law. *See Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981) ("The underlying rationale of the pre-emption doctrine, as stated more than a century and a half ago, is that the Supremacy Clause invalidates state laws that 'interfere with or are contrary to, the laws of congress ....'") (quoting *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824)); *McCulloch*, 17 U.S. (4 Wheat.) at 436 (preempted state law is "unconstitutional and void"). A cause of action to enforce the Supremacy Clause is thus only available to challenge state or local statutes, regulations, ordinances, or policies with the force of *law*.[24]

By contrast, Section 1983 authorizes challenges not only to state laws, but also to deprivations of rights,

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[24] As the Ninth Circuit held, and Idaho does not dispute, Idaho waived any argument that its failure to implement lawful reimbursement rates challenged here is not a "Thing" in state law that can be preempted by the Supremacy Clause. Cert. App. 4 n.2. This Court denied certiorari on the second question in Idaho's petition, and thus must assume that Idaho law directly conflicts with the Medicaid Act. *See supra* at 41. Similarly, *amici* argue that this case does not involve traditional "negative" injunctive relief (NGA Br. 29-30), but Idaho has waived any challenge to the form of relief by failing to raise it below or in its opening brief.

privileges, or immunities by individual actions or failures to act by state officials "under color of" law, even when those actions or failures to act *violate* state or local law. *Monroe v. Pape*, 365 U.S. 167, 172 (1961) (Section 1983 provides remedy for rights violations caused "by an official's abuse of his position," even if official violated state law), *overruled on other grounds by Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 663 (1978). Section 1983 thus provides a mechanism for challenging a broad range of state and local executive branch action or inaction that lacks the force of law. *See, e.g., id.* at 169 (warrantless search and arrest); *Wilson v. Garcia*, 471 U.S. 261, 263 (1985) (police beating). The Supremacy Clause does not reach so far – which was among the reasons why Congress felt the need to enact Section 1983. *See Monroe*, 365 U.S. at 172-83 (discussing legislative history).[25]

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[25] Idaho points to *Blessing v. Freestone*, 520 U.S. 329 (1997), and *Suter v. Artist M.*, 503 U.S. 347 (1992), as cases in tension with the availability of preemption injunction actions to enforce the Supremacy Clause. Pet. Br. 25; *see also* U.S. Br. 27-28. But those cases involved challenges to state executive branch *actions or failures to act*, not, as here, preemption challenges to the enforcement of state *laws or regulations*. *See Blessing*, 520 U.S. at 337, 345-46 (challenging agency's failure promptly to assign caseworkers); *Suter*, 503 U.S. at 352 (challenging agency's failure to take adequate steps to obtain child support payments). The parties in *Blessing* and *Suter* did not brief the possibility that the challenges could proceed under the Supremacy Clause, and so the Court did not need to reach the question whether, or when, state executive actions may amount to "laws" subject to challenge under the Supremacy Clause. *Cf.* David Sloss, *Constitutional Remedies for Statutory Violations*, 89 Iowa L. Rev. 355, 365-69 (2004) (discussing Court's disparate

2. Section 1983 also makes available broader remedies to private litigants. The sole remedies available for equitable claims under the Supremacy Clause are injunctive and declaratory relief. Section 1983, in contrast, provides for damages, including punitive damages (*see Carlson v. Green*, 446 U.S. 14, 22 (1980)), and since 1976, attorneys' fees under 42 U.S.C. §1988(b).

When it was first adopted in 1871, supporters of the provision that became Section 1983 confirmed their intent to provide for monetary relief. *See, e.g.*, Cong. Globe, 42d Cong., 1st Sess. App. 477 (1871) (Rep. Dawes) (provision would give every citizen "a civil remedy in the United States courts for any damage sustained" in violation of federal rights); *id.* at App. 446 (Rep. Butler) (provision would provide "reparation" and ensure that "full indemnity is made").

Opponents similarly complained that the provision that became Section 1983 created "'a civil action for damages ... in the Federal courts,'" and lamented the "'mercenary considerations'" this expansion of remedies was likely to foster. *Monroe*, 365 U.S. at 178 (quoting Cong. Globe, 42d Cong., 1st Sess. App. 50 (1871) (Rep. Kerr)); *see also* Cong. Globe, 42d Cong., 1st Sess. App. 365 (1871) (Rep. Arthur) (state officials would be subjected to "heavy damages and amercements").[26]

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approaches to challenges to state legislative and executive actions alleged to conflict with federal law). Similarly, despite *amici*'s fears (NGA Br. 32), federal criminal laws cannot "preempt" individual actions by government actors or private parties that do not have the force of law.

[26] *Amici* note that some members of the Congress that enacted the legislation now codified as Section 1983 believed it provided "new" equitable remedies in federal court. NGA

This Court's Section 1983 jurisprudence has largely been an explication of the various contexts in which damages and other enhanced remedies, including attorneys' fees, are available. *See, e.g.*, *Gonzaga*, 536 U.S. at 276 ("The question presented is whether a student may sue a private university for [compensatory and punitive] damages" under Section 1983).

3. When it was first adopted, the statute that is now Section 1983 also greatly expanded the federal courts' jurisdiction, which had previously generally been limited to diversity cases, *supra* at 8 n.3, by providing that suits under its provisions were "to be prosecuted in the several district or circuit courts of the United States." Ku Klux Act of 1871, ch. 22, §1, 17 Stat. 13. Congress did not grant the federal courts general federal question jurisdiction without an amount in controversy until 1980. Federal Question Jurisdictional Amendments Act of 1980, §2, 94 Stat. 2369 (amending 28 U.S.C. §1331). The jurisdictional barrier imposed by the initial lack of general federal question jurisdiction, and the subsequent amount in controversy requirement, was among several reasons litigants have often sought to have their claims fit within the scope of Section 1983, rather than pursuing equitable actions under the Supremacy Clause.

Br. 33 (emphasis omitted). Section 1983 did provide for *some* equitable remedies not previously available in federal court, both by expanding the kinds of state action that could be challenged by private litigants, *supra* at 48-50, and by greatly expanding the federal courts' jurisdiction, *infra* at 52. That Congress also fully understood that preemption injunction actions to enforce the Constitution were previously available where the courts had jurisdiction. *See, e.g.*, Cong. Globe, 42d Cong., 1st Sess. App. 420 (1871) (Rep. Bright); *Osborn*, 22 U.S. 738.

4. Finally, the limitations this Court has applied to Section 1983 claims stem from the specific statutory language, which applies to deprivations of "*rights, privileges, or immunities* secured by the Constitution and laws" of the United States. 42 U.S.C. §1983 (emphasis added); *see Golden State*, 493 U.S. at 106 ("Section 1983 speaks in terms of 'rights, privileges, or immunities,' not violations of federal law.").

By contrast, the Supremacy Clause makes no reference to "rights," but focuses on the relationship between federal and state laws, declaring that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, cl. 2; *see Golden State*, 493 U.S. at 117 (Kennedy, J., dissenting) (in contrast to Section 1983, "[p]re-emption concerns the federal structure of the Nation rather than the securing of rights, privileges, and immunities to individuals").[27]

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[27] Idaho places undue reliance on *Maine v. Thiboutot*, 448 U.S. 1 (1980). Pet. Br. 24-25; *see also* U.S. Br. 25-26. *Thiboutot* stated only that, in previous cases involving the Social Security Act, Section 1983 was "the exclusive *statutory* cause of action because ... the [Social Security Act] affords no private right of action against a State." 448 US. at 6 (emphasis added). The *Thiboutot* parties did not brief the availability of a direct cause of action under the Supremacy Clause for injunctive relief, and the suit in *Thiboutot* involved a claim for attorneys' fees not available under the Supremacy Clause. *Id.* at 9-11. Idaho's reference to dicta in *Horne v. Flores*, 557 U.S. 433 (2009), is similarly misplaced. Pet. Br. 24; Tex. Br. 9-10, 16. In a passing footnote, the Court in *Horne* stated that "neither court below was empowered to decide" whether a state statue violated the No Child Left Behind Act ("NCLB"). 557 U.S. at 456 n.6. But the statement

B. Implied statutory rights of action are distinct from injunction actions to enforce the Supremacy Clause.

This Court's implied-statutory-right-of-action jurisprudence is similarly inapplicable to suits to enforce the Constitution, including injunctive suits to enforce the Supremacy Clause.

Implied statutory rights of action, like Section 1983 claims and unlike Supremacy Clause injunction actions, permit both damages suits and challenges to actions or inactions that lack the force of law. *See Franklin v. Gwinnett County Pub. Schs.*, 503 U.S. 60, 65-66 (1992) (damages suit alleging sexual harassment; where Court finds implied statutory right of action, it "presume[s] the availability of all appropriate remedies [including damages] unless Congress has expressly indicated otherwise"); *cf. Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 656-57 (1999) (Kennedy, J., dissenting) (expressing special concern when courts "imply a private cause of action for damages" against States) (cited at Pet. Br. 34-35).

Implied statutory actions go even further than Section 1983 claims, permitting suits against private defendants for entirely private action. *Cf. Building. & Constr. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 229 (1993) ("[T]he Supremacy Clause does not re-

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was pure dicta; the case involved relief from a judgment finding a violation of a *different* federal statute. Moreover, in *Horne* the parties *agreed* in their briefs that the NCLB created no private right of action; they did not brief the availability of a Supremacy Clause action to enjoin preempted state law.

quire pre-emption of private conduct."). The Court's implied-statutory-right-of-action jurisprudence has developed primarily in the context of suits against private parties for damages – a broad category of cases all sharing no tie to the Supremacy Clause. *See, e.g.*, *Cort v. Ash*, 422 U.S. 66, 68 (1975) (shareholder derivative suit for damages against corporate directors).[28] This line of authority does not govern this case, which involves traditional equitable relief against government officials directly under the Constitution.[29]

The Court's modern approach to implied statu-

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[28] Idaho erroneously relies on *Astra USA, Inc. v. Santa Clara County*, 131 S.Ct. 1342 (2011) (Pet. Br. 26; *see also* U.S. Br. 27), but *Astra* was a damages suit against a private party. *See* 131 S.Ct. at 1347. It did not implicate the Supremacy Clause or the long history of federal suits seeking equitable relief against preempted state laws.

[29] Even in cases involving public defendants, the statutes at issue in this Court's implied statutory right of action holdings applied to private actors as well, so the Court's conclusion also decided whether the statute created an implied right of action against private defendants. For example, in *Alexander v. Sandoval*, 532 U.S. 275 (2001), although the defendant was a state official, the federal regulations at issue were authorized by a federal statute (Title VI) that also covered conduct by private parties. *See also Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n*, 453 U.S. 1 (1981) (environmental statutes that reached private conduct); *California v. Sierra Club*, 451 U.S. 287 (1981) (same). Had the Court concluded that the statutes or regulations in these cases provided for an implied right of action, the holding would have permitted suits against private defendants. In contrast, Supremacy Clause actions by definition are available only to prevent public officials from implementing preempted state laws. *Sandoval*, *Sea Clammers*, and *Sierra Club* also involved challenges to state executive branch actions, not legislatively enacted laws. *See supra* at 49-50 & n.25.

tory rights of action stems from a concern that permitting suits in federal court where Congress has not authorized them "runs contrary to the established principle that the jurisdiction of the federal courts is carefully guarded against expansion by judicial interpretation ... and conflicts with the authority of Congress under Art. III to set the limits of federal jurisdiction." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 164-65 (2008) (internal quotation marks, citations, and brackets omitted). The long-established availability of preemption injunction suits to enforce the Supremacy Clause is fully consistent with these principles. Congress authorized the federal courts to exercise their traditional equitable authority, so long as the dispute otherwise fell within the limits of the court's jurisdiction, and Congress did not remove that authority in Section 30(A).

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

Examples of Supremacy Clause Cases Decided by This Court

In the 57 cases listed below, this Court decided claims for injunctive or declaratory relief initially brought in federal court against implementation of a state or local law on the ground that the law conflicted with a federal statute or regulation, and thus was preempted under the Supremacy Clause. Based on our review of the courts' published decisions, the preemption claims in these cases were not brought under 42 U.S.C. §1983; nor does it appear that the federal statutes involved contain the type of "rights-creating" language necessary to satisfy the test set forth in *Gonzaga University v. Doe*, 536 U.S. 273 (2002).

There are numerous additional preemption cases decided by this Court that address Supremacy Clause injunction claims initially brought in state court.

1. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247 (2013) (affirming Court of Appeals judgment reversing denial of declaratory and injunctive relief in action by individual residents and nonprofit groups against state statute requiring proof of citizenship when registering to vote, finding preemption by National Voter Registration Act)

2. *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 133 S. Ct. 2096 (2013) (reversing denial of declaratory and injunctive relief in action by national trade association against local trucking placard and parking requirements, finding preemption by Federal Aviation Administration Authorization Act (FAAAA))

3. *Arizona v. United States*, 132 S. Ct. 2492 (2012) (affirming in part injunctive relief in action brought by United States against state law regulating immigrants, finding preemption by federal immigration law, including Immigration Reform and Control Act (IRCA))

4. *Chamber of Commerce of the U.S. v. Whiting*, 131 S. Ct. 1968 (2011) (business and civil rights groups sought declaratory and injunctive relief against state statute regulating employment of non-citizens unauthorized to work, claiming preemption by IRCA)

5. *Chamber of Commerce of the U.S. v. Brown*, 554 U.S. 60 (2008) (reversing denial of declaratory and injunctive relief in employers' action against state statute prohibiting recipients of certain state grants from using state funds to assist, promote, or deter union organizing, finding preemption by National Labor Relations Act (NLRA))

6. *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364 (2008) (affirming declaratory and injunctive relief in action by transportation groups against state statute regulating tobacco shippers and retailers, finding preemption by FAAAA)

7. *Engine Mfrs. Ass'n v. South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004) (vacating Court of Appeals order affirming summary judgment against claims by diesel engine manufacturers, injured by reduced sales, seeking declaratory and injunctive relief against state regulation of vehicle fleets, finding regulations likely preempted at least in part by Clean Air Act, and remanding for lower courts to determine specifically which regulations were preempted)

8. *Pharmaceutical Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644 (2003) (pharmaceutical manufacturer association sought injunction against state statute implementing prescription drug rebate program, claiming preemption by Medicaid Act)

9. *Kentucky Ass'n of Health Plans, Inc. v. Miller*, 538 U.S. 329 (2003) (health maintenance organizations sought declaratory and injunctive relief against state statute that impaired insurers' discretion to contract selectively with health care providers, claiming preemption by Employee Retirement Income Security Act of 1974 (ERISA))

10. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424 (2002) (towing company sought declaratory and injunctive relief against municipal ordinance regulating tow trucks, claiming preemption by Interstate Commerce Act)

11. *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635 (2002) (concluding that doctrine of *Ex parte Young* permits telecommunications company's action for declaratory and injunctive relief against state commission order requiring payments to competitor, claiming preemption by Telecommunications Act of 1996)

12. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) (reversing denial of declaratory relief in action by tobacco manufacturers and sellers against state regulations restricting sale and marketing of tobacco products, finding preemption by Federal Cigarette Labeling and Advertising Act)

13. *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000) (affirming summary judgment for as-

sociation of companies engaged in foreign commerce that sought declaratory and injunctive relief against state statute restricting trade with Burma, finding preemption by Foreign Operations, Export Financing, and Related Programs Appropriations Act)

14. *United States v. Locke*, 529 U.S. 89 (2000) (reversing denial of declaratory and injunctive relief in action by trade association of oil tanker operators against state regulations governing tanker operations, finding preemption by Ports and Waterways Safety Act)

15. *Foster v. Love*, 522 U.S. 67 (1997) (affirming Court of Appeals judgment reversing denial of injunction in voters' action for declaratory and injunctive relief against state primary system, finding preemption by federal election statutes)

16. *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806 (1997) (trustees of ERISA-regulated health plans sought injunction against state tax on medical centers, claiming preemption by ERISA)

17. *California Div. of Labor Standards Enforcement v. Dillingham Constr., N. Am., Inc.*, 519 U.S. 316 (1997) (contractors sought declaratory relief against state statute applicable to public contracts requiring payment of prevailing wages to apprentices in programs without state approval but allowing payment of lower wage in state-approved programs, claiming preemption by ERISA)

18. *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474 (1996) (per curiam) (remanding for entry of narrower injunction, in action by Medicaid providers seeking declaratory and injunctive relief against state constitutional amendment pro-

hibiting use of state funds for abortions, finding preemption by Medicaid Act as affected by Hyde Amendment)

19. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) (insurers sought injunction against state statute that imposed surcharges on hospital rates for patients of certain insurance carriers, claiming preemption by ERISA)

20. *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125 (1992) (affirming Court of Appeals judgment reversing denial of injunction in employer's action against District of Columbia statute regulating health care coverage, finding preemption by ERISA)

21. *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992) (affirming Court of Appeals judgment reversing denial of declaratory and injunctive relief in action by trade association against state statute regulating employees handling hazardous waste, finding preemption by Occupational Safety and Health Act and related regulations)

22. *Morales v. Trans World Airlines*, 504 U.S. 374 (1992) (affirming declaratory and injunctive relief in action by airlines against state guidelines governing airfare advertising, finding preemption by Airline Deregulation Act)

23. *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495 (1988) (oil refineries and wholesalers sought declaratory and injunctive relief against Puerto Rico agency orders regulating oil prices, claiming preemption by Emergency Petroleum Allocation Act)

24. *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988) (affirming Court of Appeals judgment reversing denial of declaratory relief in action by natural gas companies against state statute requiring state approval for natural gas companies to issue securities, finding preemption by Natural Gas Act)

25. *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987) (mining corporation sought declaratory and injunctive relief against state permit requirement, claiming preemption by Coastal Zone Management Act, other federal land use statutes, and United States Forest Service regulations)

26. *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (employer sought declaratory and injunctive relief against state statute requiring reinstatement of employees after pregnancy leave, claiming preemption by Title VII of the Civil Rights Act of 1964)

27. *Wisconsin Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282 (1986) (affirming declaratory and injunctive relief obtained by debarred business against state statute penalizing repeat NLRA violators, finding preemption by NLRA)

28. *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707 (1985) (operator of plasma centers sought declaratory and injunctive relief against ordinance regulating plasma collection, claiming preemption by Food and Drug Administration regulations)

29. *Lawrence County v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256 (1985) (approving of federal court preemption action by county seeking declaratory relief,

and holding state statute regulating distribution of funds by units of local government preempted by Payment in Lieu of Taxes Act) (*Lawrence County* involved review of a state court decision, but this Court stated that it was error for the federal courts to have dismissed the county's earlier preemption case filed in federal court, *see* 469 U.S. at 259 n.6)

30. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984) (reversing Court of Appeals judgment that dissolved injunction and reversed declaratory judgment, in action by cable television operators against state ban on broadcast advertising of alcoholic beverages, finding preemption by Federal Communications Commission regulations)

31. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983) (affirming in part declaratory and injunctive relief in employers' action against state law prohibiting pregnancy discrimination in employee benefits plans, finding preemption by ERISA)

32. *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983) (utility companies sought declaratory and injunctive relief against state statute that conditioned construction of nuclear power plants on availability of adequate storage and disposal facilities, claiming preemption by Atomic Energy Act and related regulations)

33. *Edgar v. Mite Corp.*, 457 U.S. 624 (1982) (corporation sought declaratory and injunctive relief against state securities law, claiming preemption by Williams Act)

34. *New York Tel. Co. v. New York State Dep't of Labor*, 440 U.S. 519 (1979) (employers sought de-

claratory and injunctive relief against state statute that provided for unemployment benefits to striking workers, claiming preemption by NLRA)

35. *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 439 U.S. 96 (1978) (automobile manufacturer and franchisees sought declaratory and injunctive relief against state statute requiring agency approval to open new retail dealerships, claiming preemption by Sherman Act)

36. *Malone v. White Motor Corp.*, 435 U.S. 497 (1978) (employer sought declaratory and injunctive relief against state statute imposing pension funding charge on certain employers, claiming preemption by NLRA)

37. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978) (affirming in part declaratory and injunctive relief in tanker vessel operators', owners', and customers' action against state statute regulating oil tanker design, finding preemption by Ports and Waterways Safety Act of 1972)

38. *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977) (affirming declaratory and injunctive relief in meat processor's and flower millers' action against state statute and regulation governing labeling of packaged foods, finding preemption by Federal Meat Inspection Act and Fair Packaging and Labeling Act)

39. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973) (affirming injunctive relief in action by airport operator and airline against municipal noise ordinance banning night flights, finding preemption by Federal Aviation Act)

40. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973) (ship and oil terminal owners and operators and shipping associations sought declaratory and injunctive relief against state statute governing oil spill liability, claiming preemption by Water Quality Improvement Act and Admiralty Extension Act)

41. *Perez v. Campbell*, 402 U.S. 637 (1971) (reversing denial of declaratory and injunctive relief in action by judgment debtor against state statute automatically suspending driver's license based on nonpayment of judgments, finding preemption by Bankruptcy Act)

42. *Rosado v. Wyman*, 397 U.S. 397 (1970) (reversing Court of Appeals judgment that vacated injunctive relief in action by welfare recipients against amendment to state public benefits law, finding preemption by Social Security Act)

43. *Railroad Transfer Serv., Inc. v. City of Chicago*, 386 U.S. 351 (1967) (reversing denial of declaratory and injunctive relief in motor carrier's action against city ordinance requiring license to operate commercial vehicles, finding preemption by Interstate Commerce Act)

44. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) (avocado growers sought declaratory and injunctive relief against state statute governing avocado certification, claiming preemption by Agricultural Adjustment Act and related regulations)

45. *Kesler v. Department of Pub. Safety, Fin. Responsibility Div., Utah*, 369 U.S. 153 (1962) (bankrupt sought declaratory and injunctive relief against state statute revoking motor vehicle license and registration, claiming preemption by Bankruptcy Act)

46. *Campbell v. Hussey*, 368 U.S. 297 (1961) (affirming injunction in action by tobacco auction warehouse owners against state statute requiring that certain strains of tobacco be labeled, finding preemption by Tobacco Inspection Act and implementing regulations)

47. *Public Utils. Comm'n of Ohio v. United Fuel Gas Co.*, 317 U.S. 456 (1943) (affirming injunction in action by natural gas company against state commission's orders setting natural gas transport rates, finding preemption by Natural Gas Act of 1938)

48. *Parker v. Brown*, 317 U.S. 341 (1943) (raisin producer sought injunctive relief against state statute requiring diversion of raisins into surplus and stabilization pools, claiming preemption by Sherman Act and Agricultural Marketing Agreement Act of 1937)

49. *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148 (1942) (reversing denial of injunction in action by butter company against state statute allowing seizure of food products, finding preemption by federal law governing food inspection, codified in Internal Revenue Code and related regulations)

50. *Hines v. Davidowitz*, 312 U.S. 52 (1941) (affirming injunction in action by non-citizen against state law requiring non-citizens to register and carry identification, finding preemption by Alien Registration Act of 1940)

51. *Mintz v. Baldwin*, 289 U.S. 346 (1933) (cattle company sought injunction against state order that required certification of disease-free cattle, claiming preemption by federal statute governing shipments from quarantined areas)

52. *Clallam County, Wash. v. United States*, 263 U.S. 341 (1923) (answering certified questions to Court of Appeals in action by lumber company and United States seeking decree against state and local tax, finding company to be instrumentality for carrying out war formed under federal Act of July 9, 1918, and thus not subject to state taxation)

53. *Choctaw, Okla., & Gulf R.R. Co. v. Harrison*, 235 U.S. 292 (1914) (reversing denial of injunction in action by railroad company against state taxation of mines the railroad operated on land leased from Choctaw and Chickasaw Indians, finding railroad to be federal instrumentality not subject to taxation under Curtis Act of 1898)

54. *Railway Co. v. McShane*, 89 U.S. (22 Wall.) 444 (1874) (affirming injunction in action by railroad against county taxation of certain property, finding preemption by federal Act of July 2, 1864)

55. *Union Pac. R.R. Co. v. Peniston*, 85 U.S. (18 Wall.) 5 (1873) (railroad incorporated by federal Act of July 1, 1862 sought to enjoin county taxation of certain property, claiming preemption by federal Act of July 2, 1864)

56. *Gilman v. Philadelphia*, 70 U.S. (3 Wall.) 713 (1865) (coal wharves owner sought injunction against state law authorizing construction of bridge over river, claiming preemption by federal Act of February 18, 1793, which authorized vessels enrolled and licensed according to its provisions to engage in coasting trade)

57. *Osborn v. Bank of the U.S.*, 22 U.S. (9 Wheat.) 738 (1824) (affirming injunction in action by Bank of

the United States against state tax, finding preemption by federal statute creating the Bank)